



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. O-3569
Re: Liability of War Shipping
Administration for
tax imposed upon the use
of motor fuel purchased
in Texas by Chapter 184,
Article XVII, 47th Legis-
lature and related questions.

In your letter of August 28, 1943, you request our opinion upon the factual situation presented in a letter to you from Magnolia Petroleum Company dated June 17, 1943, which states:

"On June 10 the writer discussed with your Mr. Mansfield the question of the application of Texas Motor Fuel Tax with respect to sales of gasoline to vessels of the War Shipping Administration for use as ship supplies. The following is a complete outline of the circumstances relative to such sales which we agreed to furnish.

"Occasionally at Houston, Beaumont and other gulf points deliveries of gasoline are made to vessels, which are owned or under charter by the War Shipping Administration, for use as ship supplies. Vessels which are requisitioned or chartered by the War Shipping Administration are operated by the steamship companies under the following contract forms:

1. Contract Form OAA 4-4-42 (General Agency Agreement) captioned 'Service Agreement for Vessels of which the War Shipping Administration is Owner or Owner Pro Hac

Honorable Geo. H. Sheppard page 2

Vice'. This contract form is an agreement providing for the operation by the contractor of vessels owned by the War Shipping Administration and/or other U. S. Governmental Agencies.

"2. Contract Form TCA 4-4-42 (Time Charter Agreement) captioned 'Service Agreement for Vessels time-chartered from others by the War Shipping Administration.' This form of contract provides for the operation by the contractor as agent for the government of vessels privately owned by others, but which are under time-charter to the War Shipping Administration and/or other U. S. Governmental Agencies.

" . . .

"The War Shipping Administration claims that it is the purchaser, the steamship companies merely acting as 'agents' and, therefore, sales to their vessels are exempt from all Federal, State and Local sales and use taxes. Accordingly the steamship companies will not honor any such taxes included on the sales invoices.

" . . .

"Will you kindly review this question and advise if the sales of gasoline in Texas, as set out above, may be made free of the Texas Motor Fuel Tax, and, if so, the form of certificate, if any, that will be required in support of such sales."

The legal incidence of our motor fuel tax is upon the ultimate user or consumer of the motor fuel for the propulsion of motor vehicles upon the highways of the State of Texas, and not upon the seller or vendor of motor fuel. Article 7065b-2(a) V. A. C. S.

The War Shipping Administration was established by executive order on February 7, 1942, to control the operation, purchase, charter, requisition, and use of all ocean vessels under the flag or control of the United States (with certain exceptions not necessary to mention here). This agency was established by virtue of the authority vested in the President by the Constitution and statutes of the United States. Since it is an agency or instrumentality of the federal government, it has the same implied constitutional immunity from State taxation as the United States.

Honorable Geo. H. Sheppard page 3

Subsection 2(d) of Article 7065b V. A. C. S. provided that no tax shall be imposed upon the sale, use, or distribution of any motor fuel, the imposing of which would constitute an unlawful burden on interstate commerce and which is not subject to be taxed under the Constitution of the State of Texas and the United States.

We have read the two agreements attached to your opinion request, and are satisfied that such agreements create a master and servant relationship between the War Shipping Administration and the other parties thereto.

Since this agency is a federal agency or instrumentality performing a federal function through "agents", not using the motor fuel purchased upon the highways of this State, but as "ship supplies", and impliedly exempt from State taxation, we are of the opinion that the War Shipping Administration is not liable for the motor fuel tax on gasoline so purchased by it. We are not passing upon the sufficiency of the form of exemption certificate inquired about as none was presented to us, and consider this an administrative problem.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Thos. B. Duggan, Jr.*
Thos. B. Duggan, Jr.
Assistant

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APPROVED SEP 11, 1943

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

